

FEB 21 2008

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

BLAINE TRAVIS FIFIELD,

Defendant - Appellant.

No. 07-30293

D.C. No. CR- 03-0042- DWM

MEMORANDUM *

Appeal from the United States District Court
for the District of Montana
Donald W. Molloy, District Judge, Presiding

Submitted February 19, 2008**

Before: O'SCANNLAIN, TASHIMA, and BERZON, Circuit Judges.

After pleading guilty to two counts of unlawful possession of firearms in violation of 18 U.S.C. §§ 922(g)(1) and 922(g)(3), appellant Fifield was originally sentenced on July 6, 2004, to 54 months' imprisonment on each count

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2)(C).

concurrently, but to run consecutively to two previously-imposed Montana state sentences. This is Fifield's third appeal from the sentence. *See United States v. Fifield*, 432 F.3d 1056 (9th Cir. 2005) ("*Fifield I*"); *United States v. Fifield*, 485 F.3d 1053 (9th Cir. 2007). We have jurisdiction pursuant to 28 U.S.C. § 1291 and 18 U.S.C. § 3742(a).

On this appeal, Fifield again challenges the district court's running his federal sentence consecutively to his state court sentences. He contends that the consecutive federal sentence violates his Sixth Amendment rights as construed in *Apprendi v. New Jersey*, 530 U.S. 466 (2000); *Blakeley v. Washington*, 542 U.S. 296 (2004); and *United States v. Booker*, 543 U.S. 220 (2005).

Fifield concedes, however, that this issue has already been adversely decided against him in *Fifield I*. *See* 432 F.3d at 1066-67. He further recognizes that "one three-judge panel of this court cannot reconsider or overrule the decision of a prior panel" (quoting *United States v. Gay*, 967 F.2d 322, 327 (9th Cir. 1992)). And, while Fifield does not expressly so recognize, our earlier ruling in *Fifield I* of the Sixth Amendment issue is the law of the case and, as such, is binding in all subsequent proceedings in this case. *See, e.g., United States v. Cote*, 51 F.3d 178, 181 (9th Cir. 1995) ("The law of the case doctrine states that the decision of an appellate court on a legal issue must be followed in all subsequent proceedings in

the same case.” (quoting *Herrington v. County of Sonoma*, 12 F.3d 901, 904 (9th Cir. 1993)).

For the foregoing reasons, the judgment and sentence of the district court is **AFFIRMED.**